

No. 82-1273

Office - Supreme Court, U.S.  
FILED

MAY 26 1983

ALEXANDER L. STEVAS,  
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

STATE OF MAINE,  
Petitioner

v.

RICHARD THORNTON,  
Respondent

ON WRIT OF CERTIORARI TO THE  
SUPREME JUDICIAL COURT OF THE  
STATE OF MAINE

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 31, 1983  
CERTIORARI GRANTED APRIL 4, 1983

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## NOTATION

The following decision and order have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for a Writ of Certiorari:

Decision of the Maine  
Supreme Judicial Court  
in State of Maine v.  
Richard Thornton, decided  
December 6, 1982. . . . . A1

Order of the Maine Superior  
Court (Somerset County)  
in State of Maine v.  
Richard Thornton, dated  
April 9, 1982, and filed  
April 16, 1982. . . . . B1

RELEVANT DOCKET ENTRIES

MAINE DISTRICT COURT  
DISTRICT TWELVE  
DIVISION OF SOMERSET  
CRIM. DOCKET NO. 81-4456

Date, Place & Offense-8/3/81,  
Hartland, Unlawfully furnishing  
scheduled 2 drugs

Plea-Not Guilty

Sentence-12/23/81 After not guilty  
plea and at def's request,  
ordered transferred to Superior  
Court. Benoit, J.

MAINE SUPERIOR COURT  
DOCKET NO. CR-82-10

01/05/82-Complaint and Appearance  
Bond transferred from District  
Court.

02/23/82-Motion to Suppress filed.

04/05/82-Motion to Suppress heard  
before Hon. Morton A. Brody with  
Edna Ordway, Court Reporter;  
John Alsop, ADA; Donna Zeegers,  
Esq. with Defendant. State's  
Witnesses: Carol Crandall, MSP.  
Defense Witnesses: Linda  
Thornton; 2-Harold Hartford,  
Constable. Defense Exhibits  
Numbered 1 thru 14 - All Admitted.  
Taken under Advice by Justice  
Brody. Defendant's Memorandum  
in Support of Motion to Suppress  
filed by Attorney Zeegers.



04/16/82-ORDER:..... The Motion to Suppress is GRANTED. It is hereby ORDERED AND DECREED THAT ALL ARTICLES AND ITEMS OF EVIDENCE OF EVERY KIND AND DESCRIPTION THAT WERE UNLAWFULLY SEIZED FROM THE PROPERTY OF THE DEFENDANT AND THE DEFENDANT'S PREMISES AT HARTLAND, MAINE, SHALL NOT BE RECEIVED OR ADMITTED INTO EVIDENCE AND NO TESTIMONY OR COMMENT SHALL BE RECEIVED RESPECTING THE SAME AND THEY ARE HEREBY SUPPRESSED: ALL STATEMENTS AND/OR ADMISSIONS BOTH ORAL AND WRITTEN THAT MAY HAVE BEEN MADE BY THE DEFENDANT AS A RESULT OF SAID ILLEGAL SEARCH AND SEIZURE SHALL NOT BE RECEIVED OR ADMITTED INTO EVIDENCE AND NO TESTIMONY OR COMMENT SHALL BE RECEIVED RESPECTING THE SAME AND THEY ARE HEREBY SUPPRESSED. DATED APRIL 9, 1982. /s/ Morton A. Brody, Justice, Superior Court (Copies forwarded to both Counsel on April 13, 1982)

04/28/82-Notice of Appeal by the State Pursuant to 15 M.R.S.A. Section 2115-A.1 and Rule 37B, M.R. CRIM.P. FILED.

04/28/82-Approval of Attorney General for Appeal by State Pursuant to 15 M.R.S.A. Section 2115-A.5 and Rule 37B(b), M.R. CRIM.P. filed.

04/29/82-Certified copies of the  
Notice of Appeal by the  
State and Approval of Attorney  
General for Appeal by State  
and Docket Sheet, sent to  
District Attorney, Law Court,  
Donna Zeeger, Esq., and Edna  
Ordway Court Reporter.

MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
LAW DOCKET NO. SOM-82-173

- May 5, 1982-Certified copy of  
notice of appeal and docket  
entries filed May 3, 1982.  
Approval of Attorney General  
for appeal by the State filed  
5/3/82.
- May 14, 1982-Clerk's record and  
exhibits filed. exhibits in  
record.
- May 24, 1982-Transcript of hearing  
on motion to suppress dated  
April 5, 1982 filed by Edna  
Ordway, C.R.
- July 7, 1982-Appellant's brief  
filed.
- Aug. 2, 1982-Brief and appendix  
filed by defendant-appellee.
- Sept. 22, 1982-Case argued. All  
Justices sitting.
- Dec. 6, 1982-Mandate filed. (Carter,  
J.) Judgment affirmed.  
Certified copy of mandate with  
copy of decision to Superior  
Court Clerk.

Feb. 9, 1983-Notice from the office  
of the clerk, Supreme Court  
of the U.S. that a petition  
for certiorari has been filed.

April 7, 1983-Order Allowing  
Certiorari filed April 4,  
1983, filed.

STATE OF MAINE  
V.  
RICHARD THORNTON

MAINE DISTRICT  
COURT  
DISTRICT TWELVE  
DIVISION OF  
SOMERSET

AFFIDAVIT AND REQUEST  
FOR SEARCH WARRANT

I, Carroll E. Crandall, after being duly sworn, depose and say that:

I am a Trooper for the Maine State Police and have been for four and a half years. Your affiant has received formal drug training at the Maine Criminal Justice Academy in February 1975 and the Maine State Police Academy in March of 1977. In this training I received knowledge on the appearance, composition, and effects of marijuana. I have made several seizures of marijuana resulting in arrests and convictions. I have sent samples of marijuana to laboratories for analysis and reports have come back from the chemist to show that

in fact the substance that I sent to the chemist was marijuana (Cannibis). I have the ability to accurately identify marijuana in either a growing or dried state.

On information and belief supplied by a reliable, cooperating citizen that on or about the thirty-first day of July, A.D. 1981, in Hartland, County of Somerset and State of Maine, that said citizen did observe marijuana plants growing in several areas penned in by wire mesh in a wooded area behind the residence of Richard Thornton at Davis Corner Road, Hartland, Maine.

That your affiant went to said wooded area on August 3, 1981, and discovered marijuana plants to be growing at the place and position behind the said residence as described by said reliable informant.

That you affiant made said observations by looking through said wire mesh fence (chicken wire).

That your affiant does further describe said wire mesh (chicken wire) as being approximately 2-3 feet high and that your affiant was able to look over and through said wire mesh fence and did observe numerous marijuana plants 3 to 4 ft. high growing in the ground and being cultivated upon said property. Your affiant does estimate that there are between 30 and 40 marijuana plants at said location.

That your affiant requests permission to search for marijuana in the aforementioned wooded area owned by Richard Thornton, more particularly described as a wooded area situated in back of a wood frame house of natural wood color with several outbuildings. The parcel of land is located on the

north side of the Davis Corner Road in said Hartland and bordered on the south side by the property of Linwood Leavitt and the property of Gerald Wheeler, bordered on the east side by Henry Parker, bordered on the north side by the property of Roland Reynolds and the property of Steven McNichol, and bordered on the west side by the property of Ellery Ricker.

Your affiant does reasonably believe that probable cause does exist and that the following subject, Richard Thornton, is in violation of Title 17-A Sections 1107 and 1114 of Maine Revised Statutes Annotated.

WHEREFORE, your affiant requests the court to issue a search warrant directing your affiant to conduct a search of the above-described wooded area at Davis Corner Road, Hartland, in the daytime, and that your affiant

be further directed to seize and return to the court any marijuana (cannibis) that may be located on said premises.

WHEREFORE, your affiant does further request that he be commanded to search all lands owned or occupied by the said Richard Thornton, excluding buildings and structures designed to exclude human beings. That your affiant did observe approximately one year ago evidence that marijuana was grown on other locations on the property of the said Richard Thornton. That said observation did consist of approximately one year ago your affiant observing approximately 1/4 acre of land that showed evidence that marijuana plants had been previously cultivated and harvested during the Fall of 1980.

DATED: August 3, 1981

/s/Carroll E. Crandall  
Carroll E. Crandall



STATE OF MAINE

SOMERSET, SS.

Subscribed and sworn to me by  
the said Carroll E. Crandall, this  
third day of August, A.D. 1981, at  
Skowhegan, County of Somerset and  
State of Maine.

/s/Richard C. Poland  
Richard C. Poland  
Complaint Justice  
12th District Court  
Somerset Division  
Skowhegan, Maine

MAINE DISTRICT  
COURT  
DISTRICT TWELVE  
DIVISION OF  
SOMERSET

SEARCH WARRANT

TO: Any officer authorized by law to  
execute this Search Warrant

Affidavit(s) having been made  
before me by Carroll Crandall of the  
Maine State Police which affidavit is  
attached hereto and incorporated by  
reference herein, and as I am satisfied  
that there is probable cause to believe  
that grounds for the issuance of a  
search warrant exist, you are hereby  
commanded to search the place or person  
herein described for the property herein  
specified and, if the property is found,  
to seize such property and prepare a  
written inventory of the property  
seized.

Place or person to be searched:

Wooded area behind the residence of Richard Thornton, Davis Corner Road, Hartland, Maine (More fully described in the attached affidavit) See attached affidavit of Carroll Crandall which is attached hereto and incorporated herein by reference.

Property or articles to be searched for:

Marijuana and Marijuana Plants

See attached affidavit of Carroll Crandall which is attached hereto and incorporated herein by reference.

Name of owner or occupant of place to be searched, if known to affiant:

Richard Thornton  
See attached affidavit of Carroll Crandall which is attached hereto and incorporated herein by reference.

This warrant shall be executed between the hours of 7:00 A.M. and 7:00 P.M. and shall be returned, together with a written inventory, within 10 days of the issuance hereof, to the Clerk of the District Court Division of the Twelfth District of the District Court of Maine.

Issued at Skowhegan in the County of  
Somerset this third day of August  
A.D., 1981.

/s/ Richard C. Poland  
~~District-Judge~~  
Complaint Justice

MAINE DISTRICT COURT  
DISTRICT TWELVE  
DIVISION OF SOMERSET

STATE OF MAINE

V.

RICHARD THORNTON

Defendant (DOB \_\_\_\_\_)

(Residence Box 116,  
Hartland, Maine)

COMPLAINT FOR VIOLATION OF  
T. 17-A MRSA § 1106 (CLASS D)  
(Unlawfully Furnishing Scheduled 2 Drugs)

/s/ Gerald R. LaPointe, Sr., being  
duly sworn, deposes and says (upon  
information and belief), that on or  
about August 3, 1981 in the city/town  
of Hartland, Somerset County, Maine,  
the above named defendant did: inten-  
tionally or knowingly furnish what he  
knew or believed to be a scheduled  
drug, to wit, marijuana, and which is,  
in fact, a scheduled drug, to wit, a  
scheduled 2 drug, by then and there  
possessing the said marijuana with

intent to furnish, give, dispense or  
otherwise transfer to another.

/s/Gerald R. LaPointe, Sr.  
Complainant

Sworn to before me, August 11, 1981

/s/Barbara K. Butler  
Clerk, Complaint Justice,  
Judge, Pro Tem

MAINE SUPERIOR COURT  
SOMERSET, SS.

STATE OF MAINE, )  
Plaintiff )

V. )

RICHARD THORNTON, )  
Defendant )

MOTION TO SUPPRESS

NOW COMES the Defendant, Richard Thornton, and moves this Honorable Court for an Order to suppress for use as evidence the observations made and property seized by law enforcement officers at the Defendant's property on August 3, 1981. This motion is based upon the following:

1. There was an illegal search of Defendant's property;
2. The observations were made and the property was seized without a valid warrant:

3. There was not probable cause for believing the existence of the grounds on which the warrant was issued;

4. The observations that were made and the property that was seized were not those described in a valid warrant; and

5. The warrant was illegally executed.

Dated: February 22, 1983

/s/Donna L. Zeegers  
Donna L. Zeegers, Esq.  
Attorney for Defendant



MAINE SUPERIOR COURT  
SOMERSET, SS.

STATE OF MAINE	)	NOTICE OF APPEAL BY THE
	)	STATE PURSUANT TO 15
V.	)	M.R.S.A. § 2115-A.1 AND
	)	RULE 37B, M.R.CRIM.P.
RICHARD THORNTON)	)	

1. The Superior Court at Somerset County in the above-captioned matter, by pre-trial order dated April 9, 1982, suppressed for use as evidence marijuana that was seized from the property of the above-named defendant, any testimony or comments about the marijuana, and "all statements and/or admissions both oral and written that may have been made by the defendant" pursuant to the seizure of the marijuana.

2. An appeal by the State from the Superior Court's suppression order

is authorized by 15 M.R.S.A. §2115-A.1  
and permitted by Rule 37B, M.R.Crim.P.

WHEREFORE, the State appeals to  
the Supreme Judicial Court, sitting as  
the Law Court, from the above-described  
suppression order against the State in  
the above-captioned matter.

This notice of appeal is accompanied  
by a written approval of the Attorney  
General of the State of Maine.

Dated: 4/27/82    /s/ David W. Crook  
                             DAVID W. CROOK  
                             District Attorney

MAINE SUPERIOR COURT  
SOMERSET, SS.

STATE OF MAINE     ) APPROVAL OF ATTORNEY  
                      ) GENERAL FOR APPEAL BY  
              V.         ) STATE PURSUANT TO 15  
                      ) M.R.S.A. §2115-A.5 AND  
RICHARD THORNTON) RULE 37B(b), M.R.CRIM.P.

I, JAMES E. TIERNEY, Attorney

General of the State of Maine, do hereby  
approve the taking of an appeal by the  
State to the Supreme Judicial Court,  
sitting as the Law Court, from the pre-  
trial order of the Superior Court at  
Somerset County, dated April 9, 1982,  
suppressing for use as evidence marijuana  
that was seized from the property of the  
above-named defendant, any testimony or  
comments about the marijuana, and "all  
statements and/or admissions both oral  
and written that may have been made by  
the defendant" pursuant to the seizure  
of the marijuana.

This written approval is given  
pursuant to 15 M.R.S.A. §2115-A.5 and  
Rule 37B(b), M.R.Crim.P.

Dated at Augusta, Maine, this 23rd day  
of April, 1982.

/s/James E. Tierney  
JAMES E. TIERNEY  
Attorney General  
State of Maine

MAINE SUPERIOR COURT  
SOMERSET, SS.

STATE OF MAINE

V.

RICHARD THORNTON

STATEMENT OF TRANS-  
MISSION OF EXHIBITS  
TO LAW COURT

EXHIBITS in the above Case consist of  
the Following: (If none, so state)

Defendant's Exhibits:

#1 - Affidavit and Request for  
Search Warrant

#1 thru #13 - Photos

#14 - Search Warrant

Above Exhibits Retained in this Office ☐

Above Exhibits Transmitted to Law Court ☒

Date: May 13, 1982 /s/Esther L. Waters  
Clerk of Courts

County of Somerset

STATE OF MAINE  
V.  
RICHARD THORNTON

MAINE SUPERIOR COURT  
SOMERSET, SS.

Reporter's Transcript of  
Hearing on Motion to Suppress

April 5, 1982

Honorable Morton A. Brody  
Justice Presiding

APPEARANCES: Mr. Alsop for State  
Ms. Zeegers for Defendant

[1]

April 5, 1982

MS. ZEEGERS: I have a Memorandum  
of Law to submit to you. I also request  
that the witnesses be sequestered in  
this matter.

THE COURT: Is this under the old  
rule where memorandums were not neces-  
sarily to be filed with the motion?

MS. ZEEGERS: Yes, Your Honor.

\* \* \*

THE COURT: Mr. Alsop, you may  
proceed.

MR. ALSOP: Yes, Your Honor.

As I construe the

[2]

MR. ALSOP (cont'd): motion by the Defendant, there are essentially two issues here, whether the Fourth Amendment applies at all, on the open field issue, and assuming, there is also a warrant in this case, which was executed, and the second issue would be if the Court determines that the Fourth Amendment does apply, the question is whether it was a proper search without a warrant, and so forth. I believe that's it.

MS. ZEEGERS: Your Honor, I would like to get from the prosecutor now a stipulation that there was a search of this property without a warrant, before a warrant was issued, and therefore,

I believe the State has that burden of proof on that issue, and the reasons for the warrantless search.

THE COURT: Is there any question about that?

MR. ALSOP: Well, the facts are, Your Honor -- We are talking about marijuana plants here -- The marijuana plants were observed on the property, prior to the issuance of the warrant, and I am not willing to stipulate that it was a Fourth Amendment search.

MS. ZEEGERS: Your Honor, the affidavit of the police officer states that he went onto the property and saw the marijuana, and then got a search warrant, it is fairly clear.

MR. ALSOP: There is no question but what that



[3]

MR. ALSOP (cont'd): happened.

THE COURT: You have the burden of going forward in that event, Mr. Alsop.

MR. ALSOP: Yes, Your Honor.

\* \* \*

DIRECT EXAMINATION OF CARROLL KRANDALL

BY MR. ALSOP:

Q Your name is Carroll Krandall?

A Yes.

Q And you are employed by the  
Maine State Police?

A Yes.

[4]

Q For the past four and a half  
years?

A Five and a half years.

Q And you were so employed on  
August 3, 1981?

A Yes, I was.

Q And did you have an occasion on  
August 3, 1981, to go to the  
residence -- well, not the resi-  
dence -- but to go to the wooded  
area in Hartland and observe  
marijuana plants?

A Yes, I did.

\* \* \*

[5]

\* \* \*

THE COURT: Well, what is the primary  
issue in this case on this Motion to  
Suppress?

MS. ZEEGERS: The primary issue,  
Your Honor, is that the police officer  
in this case got some information that  
there might be marijuana growing on Mr.  
Thornton's land, and instead of getting

a search warrant and decide to search the property himself, he searched the property himself, and then he requested a search warrant, and in fact, in his affidavit he stated that he searched the property to get the search warrant, and then he went back out and seized the marijuana. There is also the issue of the informant here.

THE COURT: At this stage of the proceedings, I'm really not interested in this witness's expertise in evaluating and observing marijuana. You may proceed with what actually physically took place.

MR. ALSOP: Certainly, Your Honor.

Q Mr. Krandall, prior to going to a certain place in Hartland on that day, did you receive any information which led you to that place?

A Yes, I did.

Q And what sort of information did you receive?

\* \* \*

A I was contacted by a Harold Hartford, he is the Constable in Hartland. He had just talked with the subject, and the subject said he had been in the wooded area and had seen some marijuana, and wanted to get in touch with him. Officer Hartford and myself talked to the gentleman who indicated that he didn't want to be involved.

THE COURT: That he did or he did not?

A He did not. He said that he had just been off the Davis Corner Road and had seen some marijuana growing, or what he thought to be marijuana, and the Constable and I went out in back of a mobile home, beside the road.

Q Well, before telling us where you went, why don't you go to the board and draw a diagram of the area, telling where you went and the particular area of Hartland.

A (The witness leaves the witness stand and goes to the blackboard.) This would be the Davis Corner Road, north would be in this direction here. Mr. Thornton's driveway goes right in there, and his house is right in here.

[7]

A (cont'd) There is a mobile home located right in this area, and another house right in this area. It was indicated to us by the informant that the marijuana was growing somewhere in back of the mobile home, and we went onto the property, between the mobile home and the house, and right in here

there is a wood road, like that, we walked in from the road and up this woods road, and right in this area there was a chicken wire fence, probably three or four feet high, and probably twelve or fourteen foot square, and there was marijuana growing inside that fence.

Q Now let me ask you some questions about that diagram. You indicated that north was on top of the board?

A Yes.

Q And this horizontal stripe here is the road?

A Yes.

Q And that's what, the Davis Road?

A The Davis Corner Road.

Q Why don't you write in the Davis Corner Road right there. Is that

area of the Davis Corner Road in Hartland, is that a rural area or a fairly built-up area?

A It is a rural area.

Q And you have indicated two rectangles lying north of the Davis Corner Road, which I believe you said are residences?

[8]

A This is a mobile home here, and this is a two-story house.

Q Put M and H there for mobile home. And do you know who lives there? Do you know the occupant of the dwelling?

A A fellow by the name of Linwood Leavitt.

Q Why don't you put an L there. And who lives in the mobile home?

A Well, it is an elderly gentleman and his wife. I believe they are

the parents of either Mr. or Mrs. Leavitt, but I'm not sure.

Q And you have indicated a vertical stripe of sorts on the Davis Corner Road. Is this the driveway?

A Yes. This is the Thornton driveway, yes.

Q And what sort of a driveway is that?

A It's a dirt road.

Q Is that a wide road or a narrow road?

A About wide enough for one vehicle.

Q Have you ever been to Mr. Thornton's residence?

A Not prior to this, no.

Q And do you know how far up that road it is, the distance?

A You can see his house from the main road. I'm going to guess that it's probably a distance of



two hundred or two hundred and fifty feet, approximately.

Q And can you estimate the distance between the house here occupied by Mr. Leavitt and the intersection of his

[9]

Q (cont'd) driveway to what you have pointed out as the Davis Corner Road?

A From here to here?

Q Yes.

A Probably not more than five hundred feet at the most.

Q Now can you show on your diagram where you walked when you arrived at that area on August 3rd?

A We went in here between the mobile home and Mr. Leavitt's house, right in here.

Q And where did you go? Can you draw a line showing where you went?

A Right in here, like I said, is a tote road, or woods road of some sort in here, and we got on that woods road and followed the road right up.

Q Is that a wooded area?

A Yes, it is all wooded beyond this point here.

Q Are there any clearings in that area that you can point to?

A Just where the marijuana was growing.

Q Why don't you draw so that we can see where the marijuana was growing.

A Well, there were two fenced-in areas here.

Q And how large a fenced-in areas were they?

A This one was probably fourteen or fifteen foot square.

Q And that is the southern most patch?

[10]

A Yes. And if I remember right, it was small, probably two feet or so.

Q And was there a clearing?

A Yes, there was.

Q How big a clearing?

A Well, there were no trees growing in this area.

Q Can you estimate how large a clearing it was?

A Well, not really much bigger than the patches themselves. There were some trees outside.

Q And between the patches and the Thornton house, were there trees in that area?

A Yes, it is all wooded area in there.

Q And standing where you first observed the marijuana patches, could you also observe the Thornton residence?

A You could see it from the road out in here.

Q Well, when you are saying road, you are referring to the tote road; are you not?

A Yes, the tote road. And if I remember right, there were some cedar trees somewhere down in here, and you couldn't actually see the Thornton residence from that area.

Q Were you able to estimate from any point the distance from the marijuana patch to the Thornton residence?

A Well, after we pulled the marijuana, we walked back to Mr. Thornton's residence, and they were at the house,

[11]

A (cont'd) and this tote road goes right back to the residence, or just to the south of his residence, probably it's five hundred feet or so to the residence, four or five hundred feet.

Q Now when you walked from the Davis Corner Road, where did you park your car; do you remember, when you went up there on August 3rd?

A We parked the car in front of the mobile home.

Q And when you walked from your car up to the marijuana patch, did you go across any fences?

A No.

Q Did you see any fences?

A Just the one around the marijuana patch.

Q Could you see any signs of any sort?

A No.

Q Did you see any streams, or any natural boundaries of any sort?

A No.

Q And are you aware of the property line that may exist between the road and the marijuana patches?

A Yes, I am now.

Q At the time?

A I didn't know who owned the property the first time I was in there, no.

Q Did you have the name of the suspect in mind when you

[12]

A (cont'd) went there on August 3?

A Yes, I just figured in my own mind that it was on Mr. Thornton's property.

Q Trooper Krandall, when you were at the scene there with the two marijuana patches, did you observe any physical evidence that the area was enclosed, or were intruders to be discouraged from coming in?

A No.

Q Was there any sign of cultivation or any sort of man gardening or this sort of thing in the area?

A Well, it was obvious that in the two patches a man had been gardening.

Q Well, around the patches themselves, was that in a wild state?

A No, it was actually a wooded area around there.

Q Were there any paths or other roadways in the area?

A Just the tote road.

Q And were you able to observe the condition of that particular tote road at that time?

A Yes.

Q Well, was it a well-worn tote road, or was it not a well-worn tote road?

A Well, it hadn't been used by a vehicle for quite some time. There was nothing to indicate that it had been used for anything other than a footpath.

[13]

Q Was there any farm machinery, or anything of that sort in the area?

A No, I didn't see any.

Q What did you do after you observed the marijuana?

A Well, I looked at it and determined that it was marijuana, and then I went to the Town Office in Hartland to check the maps to find out for



sure whose property it was on, and I determined that it was the Thornton property, and I came to the District Attorney's Office and obtained a search warrant.

MR. ALSOP: I have nothing further.

CROSS EXAMINATION OF CARROLL KRANDALL

BY MS. ZEEGERS:

Q Officer Krandall, you stated that you had never been to the Thornton residence, or the Thornton property before August 3rd?

A Not that I recall.

Q Now, Officer, you filled out an affidavit in relation to this case, did you not?

A Yes, I did.

Q And that was sworn to before a Complaint Justice?

A Yes.

Q And would you like to get back to your seat here, please? Now in that affidavit you stated, in the last paragraph of that affidavit, that your affiant did

[14]

Q (cont'd) observe approximately one year ago evidence that marijuana was grown on other locations of the property of Richard Thornton, and said that observations did consist of approximately one year ago, and your affiant observed approximately a quarter acre of land, and showed evidence that marijuana plants had been previously cultivated and harvested during the fall of 1980?

A Yes.

Q Okay. In this case, Officer Krandall, the Defendant, Mr. Thornton, has been charged with

furnishing marijuana; is that correct?

A Yes, it is.

Q And as an element of that offense, his having possessed marijuana alleged to be in excess is an element of that crime; is it not?

A Yes, the fact that he was in possession of more than an ounce and a half, he was charged with that.

Q Now Officer, you had no information that Mr. Thornton was in fact selling or giving away marijuana, did you?

A No, I didn't.

Q I would like to direct your attention back to August 3, 1981, and I would like to show you this affidavit, or a copy of the affidavit, the second page of it. Is that the affidavit that you signed in this matter?

A Yes it is.

MS. ZEEGERS: Your Honor, I believe that the Court has the original affidavit, and I think something should be presented into evidence here, but I don't have the original of it.

THE COURT: Do you have a copy?

MS. ZEEGERS: Yes, I do.

THE COURT: Is there any objection?

MR. ALSOP: No objection, Your Honor.

THE COURT: That may be marked as Defendant's Exhibit No. 1, and it may be admitted without objection.

Q Okay, now in that affidavit, Officer, you stated that you had previously seen marijuana grown on that property, but you just stated now under oath that you had never been on the property. Isn't it a fact, Officer, that

you never did see marijuana growing on this property prior to this date, but in fact, the information that you got was from Warden Gilbert about it?

A Yes, it was 1980 that it was meant there. Warden Gilbert contacted me and told me that he found a patch in the wooded area that looked like marijuana was growing, and he took me to that area, and we went up on the upper side of the land there, and when Mr. Alsop asked me if I had been on the property before, I understood him to mean to the house, and I had never been to

[16]

A (cont'd) the house. Again, I had been to the upper part above the property with Warden Gilbert prior to that.

Q What time of the day was it, Officer, that you went to the property on August 3rd, the first time you went there?

A I would be guessing, it would be between 10:00 and 11:00 in the morning.

Q And at that time you didn't have a search warrant?

A No, I didn't.

Q And you made a search of that property?

A I walked in on the property where the informant thought where marijuana was growing.

Q I would like to draw your attention to February 4th, 1982, and ask you whether or not you had a telephone conversation with me on that day?

THE COURT: What was the date?

MS. ZEEGEPS: February 4th, 1982.

A I do recall a telephone conversation but I don't recall the date.

Q Isn't it true, Officer, that during our telephone conversation that you told me you got onto the Thornton property by simply going up the driveway?

A No, I didn't say that.

Q I would like to go to this chart here and ask you,

[17]

Q (cont') Officer, now to begin with, you stated that this was all wooded area?

A For the most part it is, yes.

Q Except for this part here and this part here?

A That is correct.

- Q And this is Richard Thornton's house here?
- A Yes, there is a clearing down by his house.
- Q Can you see down from the driveway here these patches?
- A No.
- Q They are about five hundred feet away?
- A Yes, ma'am.
- Q As you stated earlier?
- A Yes.
- Q And this is all wooded area here?
- A Yes, it is.
- Q And you could not see these patches from this area, or this area?

THE COURT: Just for the record, counsel is pointing to an area northerly of the trailer and the house, and southerly of the enclosed cultivated area.



MS. ZEEGERS: Thank you, Your Honor.

Q So the fences that you were talking about in your affidavit were fenced-in areas on the property of Richard Thornton?

A Yes, it is directly around where the marijuana was

[18]

A (cont'd) growing, yes.

THE COURT: These fences are four-foot meshed fences?

A Yes. It was like chicken wire. It was probably three to four feet high.

Q Officer, I would like to show you a photograph and ask you if you are familiar with that land?

A That is a fence, and the material of the fence is similar to what

was around the marijuana, but this was taken in the wintertime. I'm not sure that that is the same area, but it is a similar type fence.

Q So it could be that area then.

MS. ZEEGERS: Your Honor, I would like to mark this as Defendant's Exhibit No. 2.

Q I would like to show you another photograph and ask you if you are familiar with that?

A Well, again, it looks like the area, but when I was there in August there were leaves on the trees, and it certainly looks different. The only thing I can say is the fence is made out of the same material.

MS. ZEEGERS: I would like to offer this exhibit in evidence as Exhibit No. 3.

MR. ALSOP: No objection.

THE COURT: How many pictures do you have there?

MS. ZEEGERS: I have about seven.

[19]

THE COURT: Why don't you show them all to Mr. Alsop first and maybe we can admit them without objection, without going through each one. I take it that these are all pictures of the surrounding area?

MS. ZEEGERS: That's right, Your Honor. The prosecutor would like the officer to identify these photographs.

Q Does this look like the wooded area on the residence of Richard Thornton?

A It could be, but there is nothing I can identify from that photograph.

MR. ALSOP: May I ask the number of that exhibit?

MS. ZEEGERS: That was 4.

THE COURT: When did the search take place?

MS. ZEEGERS: August 3, 1981.

A It is possible that this is Mr. Thornton's property, but there is nothing I can identify.

MS. ZEEGERS: It could be.

THE COURT: Just a moment. We are going to have a question and an answer, and an objection or an inquiry if there is one. Right now we are getting a garbled mixture of comments.

Q Officer, does this look like it could be on the property of Richard Thornton?

THE COURT: And by this area you are referring to

[20]

THE COURT (cont'd): Defendant's Exhibit No. 7?

MS. ZEEGERS: Yes, Defendant's Exhibit No. 7.

A That could be.

Q I would like to show you what has been marked as Defendant's Exhibit No. 5, and ask you if this could be on the Defendant's property, and whether or not that looks like the footpath that you are referring to that gets you to the fenced-in area?

A I don't recognize it but it is possible.

THE COURT: Mr. Krandall, would you please try to keep your voice up?

MR. KRANDALL: Yes, sir.

Q Officer, I would like to show you what has been marked as Defendant's Exhibit No. 6, and ask you if this looks like the area on the property of Richard Thorneon, and whether

or not that could be the footpath that you have been referring to?

A It could be.

Q Officer, I would like to show you what has been marked as Defendant's Exhibit 9, and ask you if that looks like the driveway of Mr. Thornton?

A Yes, it does.

Q I would like to show you what has been marked as Exhibit No. 10, and ask you whether or not that is another photograph of the driveway of Richard Thornton?

[21]

A It could very well be. The only thing I recognize is the van parked in the dooryard.

Q I would like to show you what has been marked as Defendant's Exhibit No. 11, and ask you if that is another photograph of the driveway?

A Yes.

MS. ZEEGERS: Your Honor, I have requested that Defense Exhibit No. 12 be offered into evidence, and I don't believe that this officer would have any reason to have seen this photograph. This is an aerial photograph taken from the Town records.

MR. ALSOP: No objection, Your Honor.

THE COURT: What number is that?

MS. ZEEGERS: No. 12.

THE COURT: Exhibit No. 12 may be admitted without objection.

Q I have just one more, Officer, Defendant's Exhibit No. 13, and I would like to ask you if you have ever seen that 'No Trespass' sign on the Defendant's property?

A No, I don't recall that I have.

THE COURT: Are these being offered?

MS. ZEEGERS: Yes.

THE COURT: Is there any objection?

MR. ALSOP: Your Honor, I object to Nos. 4, 7, 5, and 6. I do not object to 9, 10, 11, and 12, and the ones

[22]

MR. ALSOP (cont'd): that I object to, I just don't feel there has been any identification on them as far as what the photograph depicts. There are undifferentiated areas of grown-over fields and woodlands covered with snow, and I don't think the Officer simply, as he said, isn't able to identify them at all.

THE COURT: May I see the ones on which objections are raised? Let me ask you, do you plan to put on other witnesses?



MS. ZEEGERS: Yes, I do, Your Honor.

THE COURT: And you can establish these through other witnesses?

MS. ZEEGERS: Yes, that's right, Your Honor.

THE COURT: Those exhibits to which there is no objection may be admitted without objection, and those exhibits to which there is an objection, the objection will be sustained. Just for the record, may we have those to which there is no objection again?

MR. ALSOP: Just for the record, Your Honor, Exhibits 9, 10, 11 and 12, there is no objection, Your Honor.

THE COURT: All right, you may proceed.

MS. ZEEGERS: There is No. 8, as well.

MR. ALSOP: I would object to No. 8 on the same basis as the others, Your Honor.

THE COURT: All right, 9, 10, 11 and 12 will be

[23]

THE COURT (con't): admitted without objection. And the others are 1 through 8, and 13?

MR. ALSOP: Yes, Your Honor.

THE COURT: The objection will be sustained.

MS. ZEEGERS: Your Honor, some of those exhibits are not photographs, one is the affidavit.

THE COURT: No. 1 is the affidavit, and that has already been admitted. All right.

Q Okay. Officer, I would like you to direct your attention again to the chart that you drew, and you

stated to the Court that you got onto the property through the back of this mobile home here?

A Yes.

Q And you got onto the footpath and went to the fenced-in area?

A Yes.

Q And you stated also that this was all wooded right here?

A Yes, it is, it is a wooded area behind both of those.

Q And when you went out to the property the first time, you obviously had no consent from the owner to go onto that property, that is from Mr. Thornton?

A That is correct.

Q And you were not going onto the property incident to an arrest?

A No.

Q Now going back to the affidavit which has been marked as Defendant's Exhibit No. 1 in this case, you stated that on information and belief supplied by a reliable cooperating citizen, that on or about the 31st day of July, 1981 in Hartland, County of Somerset, that said citizen did observe marijuana plants growing in several areas tended by a wire mesh fence in a wooded area behind the residence of Richard Thornton, Davis Corner Road, is that not what you said in that affidavit?

A Yes, ma'am.

Q And you did not say anything in that affidavit that reliable cooperating citizen was in fact an expert on identifying marijuana, did you?

A No, I didn't.

Q You did not also say in that affidavit that that citizen was there -- that there was no underlying facts of reliability in that affidavit, did you not?

A No, I didn't.

THE COURT: May I have that question again?

Q You did not say in your affidavit, you did not state in your affidavit, any underlying facts why you believed that that informant was reliable?

A No, I did not.

Q And you did not state any underlying facts in that affidavit why you believed that that informant was a

[25]

Q (cont'd) Credible person?

A No, I did not.

Q And, in fact, in that affidavit, Officer, you did not even say that marijuana plants were growing on Richard Thornton's property, did you, you stated that the informant told you that there was marijuana growing behind the wooded area behind the residence of Richard Thornton?

A That's right, the informant didn't tell me what property it was, he didn't know.

THE COURT: He didn't know?

A Apparently no, he just told me where it was.

Q And when you made a search of that property, not only you went on that property to do the search, but Constable Albert also went on the property that morning?

A He was with me that day, yes.

Q And how long did you search that property?

A We were probably just on Mr. Thornton's property a total of ten minutes. We just walked in and observed where the marijuana patch was, and then back off.

Q How many acres of land does Mr. Thornton own?

A I'm not sure.

Q His land, for the most part, is wooded land, is it not?

A Yes, I believe it is.

Q Officer, I would like to show you Defendant's Exhibit

[26]

Q (cont'd) No. 12, which the Town of Hartland has put out, and this is an aerial photograph of Mr. Thornton's property, and I would

like to ask you if you can spot on that photograph the area of Mr. Thornton's residence?

A I can spot what I believe is Mr. Thornton's residence, but I don't recognize it from the aerial photograph.

THE COURT: I can't hear what you are saying.

A I said I believe that to be Mr. Thornton's residence right here.

THE COURT: Well, you're going to have another witness anyway. He has knowledge of that.

MS. ZEEGERS: That's right.

Q I will ask you, Officer, is this an aerial photograph which appears to be essentially a wooded area?

A Yes, it does.

Q And can you tell me what this section is here, this number on the photograph?



A 925.

Q Is that 925 feet?

A Yes.

Q So in other words, one of the boundaries is 925 feet long?

THE COURT: Well, that exhibit is in evidence; isn't that right?

MS. ZEEGERS: Yes.

[27]

THE COURT: Is there anything specific that you want this witness to testify to regarding that exhibit?

MS. ZEEGERS: Well, basically, Your Honor, only that this whole property is wooded.

A Yes.

Q Now you have testified there was a footpath going on the Defendant's property out to this fenced-in area. Can you tell me where the footpath started?

A     When I went in behind the mobile home into the wooded area, I came onto the footpath, and I came back out through the woods to the road.

THE COURT:   When you're talking about the footpath, is that the same path that you originally referred to as the tote road?

A     Yes.

Q     And you didn't know where this went then?

A     I do now, but I didn't at that time.

Q     Where did you then go?

A     After we searched the property and seized the marijuana, we continued on to the so-called tote road, and back as it comes right back to Mr. Thornton's driveway down by his house.

Q Now, Officer, you stated in your affidavit that you received information on July 31st, 1981 that marijuana was supposedly growing on that property, did you not?

[28]

A I don't recall, probably I did, yes.

Q And you, in fact, waited three days before you got a search warrant, did you not?

A Yes.

Q After that time. Did you try to get a search warrant on July 31st?

A No. As I recall --

Q Thank you, Officer, I think you have answered that question. Did you try to get a search warrant on July 1?

A No.

Q Did you try to get a search warrant on July 2?

A No, I didn't.

Q So therefore, before you got the search warrant, you were not concerned that this marijuana was going to be destroyed, were you?

A I believe I was concerned, but I was tied up with another matter.

Q Well, you were not concerned enough to go get a search warrant that day, in fact you waited three days to get one?

A I didn't have an opportunity to do it prior to that.

Q When you went on the property and you saw marijuana growing, why didn't you go and get a search warrant?

A Well, I figured the marijuana was still there, and there

A (cont'd) didn't appear to be anybody right near it at the time, and I figured that if I was going to seize it right, I should probably get a warrant. So I contacted the DA's Office.

Q Why was it better to get a warrant?

A Well, if you have time to get one, it is always better, as I understand it.

THE COURT: Well, I suppose the next question should be, Officer, why didn't you get a warrant the first time instead of when you went there the second time? I mean, why didn't you get a warrant when you had this information?

A I didn't know exactly where the marijuana was. I didn't know

whose property it was on, and I didn't feel without checking it that I had enough information.

Q     Officer, I would like to show you the search warrant in this case, and let you read that for a second. I would like to get a copy of that if you have one in the file.

THE COURT:   Before we leave the physical property, Officer, can I interrupt you for a minute?

A     Yes.

THE COURT:   You say you went back to the Thornton house; is that right? Or down the footpath?

A     After we came back with a search warrant to take the marijuana.

[30]

THE COURT:   When you went back to the footpath, were you able to

observe how far the footpath was from the road, the access road and the driveway to the Thornton house?

A We came back down the footpath and came back onto Mr. Thornton's driveway. It was probably forty or fifty feet south of the house and the driveway.

THE COURT: Now, are there any other homes on that driveway?

A No.

THE COURT: So the road that goes from the Davis Corner Road northerly is the driveway solely and exclusively for Mr. Thornton?

A Yes, it is.

THE COURT: And does it stop there at the Thornton residence?

A Yes, it does.

THE COURT: Where is the front door of the Thornton house as it relates to the driveway?

A It would be on the side of the house.

THE COURT: Which side, north or south?

A It would be on the east side of the house, facing the driveway.

THE COURT: On the east side of the house?

A Yes.

THE COURT: Is there any other doorway to that

[31]

THE COURT (cont'd): house?

A I am not familiar with whether there is or not.

THE COURT: Is there a garage or driveway immediately adjacent to the Thornton house?

A I don't believe there is a garage, there might be a few small out-buildings.



THE COURT: How far are these two patches enclosed by the wall or wire mesh fence approximately from the driveway?

A Probably five or six hundred feet.

THE COURT: I take it there is no question that you cannot see these areas from the driveway or from the house; is that right?

A No, I wouldn't think so.

THE COURT: And would the road, or the footpath, so-called, also be approximately five or six hundred feet, or a little longer?

A Probably a little longer.

THE COURT: And the area from the Davis Corner Road to the footpath as you traversed it would be approximately how far, to the footpath?

A Are you referring to the area in back of the mobile home?

THE COURT: I am referring to the area from the Davis Corner Road northerly to the footpath?

[32]

A Probably three hundred feet, two to three hundred feet.

THE COURT: And do I understand that it is a wooded area immediately northerly of the house and trailer, and is immediately southerly of the footpath?

A The marijuana was growing on the north side of what you are referring to as the footpath.

THE COURT: Well, I am talking about the area between the house -- not the Thornton house -- but the house marked HL and the mobile home marked M, the area between that and the footpath. Is that a heavily wooded area?

A The wooded area starts right behind the residence. It is all wooded from there back.

THE COURT: Until you get to the footpath?

A That's right, it is growing up.

THE COURT: So there is a heavily wooded area on each side of the footpath; is that right?

A Yes, there is.

THE COURT: I take it that there is no access, or no ready access to the two wire and mesh enclosures from the the west?

A No, it is all wooded area, west of that.

THE COURT: You may proceed.

Q (Ms. Zeegers) Now you have looked at that search warrant, have you not, Officer?

A Yes, I have.

Q And the place that appears to be searched on there, it says the wooded area behind the residence of Richard Thornton, does it not?

A Yes, it does.

Q And in fact it doesn't even say you were to search the property of Richard Thornton, does it?

A There was no reason to check the residence.

THE COURT: I'm sorry, I didn't hear you.

A I had no reason to check the residence.

Q Officer, bringing your attention back to the affidavit in this case, you were asked that you be commanded to search all land occupied by the said Richard Thornton, excluding buildings

and structures designed to exclude human beings; did you not?

A Yes, I did.

Q Can you tell me what you mean by that?

A I don't think I understand the question.

Q Was that your statement on the affidavit? I don't understand the question either.

A What I was asking for was to search the property and not to search the buildings. I believe that 'excluding' is a typographical error.

Q Do you know where the boundary lines of Mr. Richard Thornton's property are?

A I know basically where they are.

[34]

Q When you came back after you got

the search warrant and searched the property, how long were you there?

A Probably forty-five minutes to an hour.

Q How did you know when to stop searching Richard Thornton's property and not search somebody else's property?

A I guess I don't.

Q When you went to the DA's Office to get a search warrant, you did not bring a deed of Richard Thornton's property with you, did you?

A No, I didn't.

Q You stated in your affidavit that you previously saw, and you thought it was back in 1980, that you saw evidence that marijuana had been harvested and cultivated on that

property, and you stated earlier that the only clear land on this entire property were these two fenced-in areas, and you stated that those fenced-in areas were around fourteen foot square or maybe thirteen foot square each, but in your affidavit you stated that you saw in 1980 a quarter acre of land that had some evidence that marijuana had been harvested. Isn't it true, Officer, that there isn't a quarter acre of cleared land on this entire property?

A There were three or four garden spots on the property, but I don't know if it would be a quarter acre.

[35]

Q You don't know if there is a quarter acre?

A No, I don't.

Q And you didn't know at that time that there had been a quarter acre of land where marijuana had been previously harvested?

A It is from what I recall from going in there with Warden Gilbert in the wooded area east of the property.

Q But you did not see then a quarter acre?

A Well, from my recollection, an area had been cultivated, and I thought it would be approximately a quarter acre.

Q But you weren't sure?

A No.

Q Officer, I would like to show you Defendant's Exhibit No. 13, and ask you if you recognize that, or can you tell me what that is?



THE COURT: Well, we already know, or he has already testified that he didn't see it. Are there any further questions about it?

Q Officer, have you ever seen those No Trespassing signs on Mr. Thornton's property?

A No.

Q You haven't seen three No Trespassing signs from the road?

A Not that I noticed.

MS. ZEEGERS: Your Honor, I have no further

[36]

MS. ZEEGERS (cont'd): questions.

REDIRECT EXAMINATION OF TROOPER KRANDALL

BY MR. ALSOP:

Q The cooperating citizen that you have referred to in your affidavit, did you feel comfortable in relying

on what he had to say to you before going out there?

A Yes, I did.

Q And everything that he said to you was confirmed by your own observations when you arrived at the scene?

A Yes, it was.

Q Would you have felt comfortable in getting a warrant from the information that you received from a reliable cooperating citizen, acting on that information alone?

A Yes, I would have.

Q You went to the scene yourself?

A Yes.

MR. ALSOP: I have nothing further.

MS. ZEEGERS: I have no further questions.

THE COURT: Thank you, Officer.

LINDA THORNTON, called on behalf of the Defendant, having been duly

sworn, testified as follows:

CLERK OF COURTS: Do you solemnly swear that the testimony you shall give in the cause now in hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

[37]

MRS. THORNTON: I do.

DIRECT EXAMINATION OF LINDA THORNTON

BY MS. ZEEGERS:

Q Would you state your full name for the record?

A Linda Sweet Thornton.

Q What is your address, Mrs. Thornton?

A Davis Corner Road, Hartland, Maine.

Q And are you related to Mr. Thornton?

A Yes.

Q Mr. Richard Thornton?

A Yes, he's my husband.

Q And how long have you been married?

A About three years.

Q And have you lived at your residence on the Davis Corner Road for that period of time?

A Yes.

Q And who else lives there with you at that residence?

A We have a baby.

Q Who owns the property that you live on, that you and your husband live on?

A Richard owns it.

Q And how long has he owned this property?

A Eleven years.

Q And how long have you lived on that property?

A Nine.

[38]

Q Are you familiar with all of the property that is owned by your husband?

A Oh, yes.

Q And how are you familiar with the property?

A I have walked over it several times, all of the boundaries, and I have been through it a lot.

Q And how long have you been familiar with the property?

A Since I moved there. I have lived there seven years.

Q And, Mrs. Thornton, I would like to show you what has been marked Exhibit No. 12, and ask you if that is a fair representation of the property that is owned by your husband?

A Yes.

Q Can you tell me how many acres of land your husband owns?

A Approximately thirty eight.

Q And those acres are fairly square?

A Yes, and all wooded, or mostly.

Q Now, Mrs. Thornton, looking back to this photograph marked as Defendant's Exhibit No. 12, can you see in that photograph an area where there are various footpaths on that property?

A Yes.

Q And can you tell me when this photograph was taken pursuant to the affidavit of the Town Clerk?

[39]

A 1975.

Q And can you tell me if those footpaths have grown up since 1975?

A Yes, considerably.

Q Now, Mrs. Thornton, I would like to show you Defendant's Exhibit No. 5 and ask you if this is a fair representation of the footpaths on your property?

A Yes.

Q Are these two footpaths very near to the two fenced-in areas on your property?

A Yes.

Q How would you describe the property owned by your husband?

A Well, the boundaries are in the woods on one, two, three, four sides, actually five. There is a portion of that on the road.

Q And you say that your property is primarily wooded?

A Yes.

Q Can you tell me what areas of the property are not wooded?

A There is a garden, a vegetable garden area, approximately thirty by sixty that is fenced in and there is a clearing where the new house would be, two spots, six by six, and six by nineteen, two other spots.

Q So there are only three areas on the property that are cleared?

[40]

A Yes.

Q And they are fenced-in areas?

A Yes.

Q And you have brought a chart here with you today, have you not?

A Yes.

Q Mrs. Thornton, can you come over here and just mark on this chart for us, and this is the aerial photograph that was taken in 1975,



and can you tell me the different areas on this photograph on the land as it appears today?

A Well, this photograph, there is only one building shown, down here this house wouldn't be there at the time.

Q Would you mark what these are?

A This is the new site of the house. This is the screen house that we have for picnics. And there is our home right here, and the sauna outhouse, and the woodshed.

Q Mrs. Thornton, would you mark right on that map approximately where the two other fenced-in areas are, and where the smaller fenced-in area is? You can sit down now. Mrs. Thornton, would you tell me about the area surrounding your borders, is that area all wooded?

A Yes, right there it is all wooded. The only non-wooded area would be on the Davis Corner Road, a small area

[41]

A (cont'd) right there, and all the rest is all wooded.

Q Can you tell me how one could make out the boundaries of your property?

A There is an old stone wall, and a barbed wire fence, an old barbed wire fence, and they go all the way around the property.

Q And would you describe the area that you and your family live on a rural area?

A Yes.

Q I would like to show you what has been marked as Defendant's Exhibit No. 13, and ask you if you are familiar with that?

A Yes.

Q What is it, Mrs. Thornton?

A It is a No Hunting, No Trespassing sign.

Q Would you stand up and mark out on the chart where these, or where any No Hunting or No Trespassing signs appear on your property?

THE COURT: Do you mean now or in the summer of '81?

Q In the summer of '81, July or August, 1981.

A There are three on this road right here, one right there, and on these borders, there are two, spaced pretty well, No Hunting and No Trespassing. And here.

THE COURT: How about on the footpath, so-called, or the tote road?

[42]

A No. Where these old tote roads

are, it comes through at different places, through here on the border where one might come over across, there is a sign.

Q So in other words, where one comes onto your property?

A Yes, they would see it.

THE COURT: Now the tote road, or one of the tote roads which goes from the driveway around to the area in back of your house where the wire mesh enclosures are; is that right?

A Right. There is just a little clearing down in here where the trailer is, and then there is a little field right in here.

THE COURT: Well, I'm talking about the place where the marijuana allegedly was growing, is there a footpath that goes past the area?

A Yes, it goes past that area.

THE COURT: And that footpath also goes to the driveway, is that right, near your house?

A Yes. There is a little field right here.

THE COURT: Well, what I would like to know is, are there any No Trespassing signs on that tote road or that footpath?

A No, not right there.

THE COURT: Or anywhere along that road?

A Well, along, right on this road right here, the main

[43]

A (cont'd) road, yes there are.

THE COURT: And that's the Davis Corner Road?

A Yes, there are three signs right through here, No Hunting and No Trespassing. On this driveway that goes in just a little way, there's a small field in here, and there's a grown-up stone wall that starts here, and just off to the side is an old stone wall right here.

Q And do some of these No Trespassing signs fall down in the wintertime?

A Oh, yes.

Q And do you always put them back up again?

A Yes.

Q Are they on your property today?

A Yes.

Q Now, Mrs. Thornton, I would like to show you Defendant's Exhibit No. 2 and ask you if you are familiar with this?

A Yes, I am.

Q And can you describe this to me?

A It is approximately a six by nineteen fenced-in area in the woods.

Q And can you tell me where that fenced-in area is on the chart?

A Right there. There are two small ones, yes, six by six.

[44]

Q And while you're right here, I would like to show you Defendant's Exhibit No. 4, and ask you if you are familiar with that?

A Yes.

Q And can you tell me what that fenced-in area is?

A That's the same spot, right here.

Q And is that a different fenced-in area?

A Yes.

MS. ZEEGERS: You may step down.

(The witness returns to the witness stand.)

Q Can you tell me in this area surrounding the fenced-in area, is that wooded?

A Yes.

Q Can you see the fenced-in area from the road?

A No.

Q From the Davis Corner Road?

A No.

Q Can you see them from your driveway?

A No.

Q Can you see them from the borders of your neighbors' property?

A No.

Q I show you what has been marked as Defendant's Exhibit No. 7,



and ask you if that is also a picture of one of the fenced-in areas?

[45]

A Yes.

Q And when was that picture taken?

A That would be in the winter, January.

Q And approximately how far are the other -- other than the two fenced-in areas we are talking about -- about how far from the border of your property --

THE COURT: Which border?

MS. ZEEGERS: This border here.

THE COURT: Southerly border?

MS. ZEEGERS: Yes, southerly border.

A Approximately two hundred and fifty feet.

Q And approximately how far are those fenced-in areas from the driveway?

A Oh, one hundred and fifty or two hundred feet.

THE COURT: How far? One hundred and fifty?

A Approximately.

THE COURT: From which part of the driveway?

A Well, where she pointed was toward the end of the driveway.

THE COURT: Toward the intersection of the Davis Corner Road end of the driveway?

A Yes.

THE COURT: And how far do you say it was?

A From where the mesh chicken wire is to the back of the property behind the houses was measured at two hundred,

A (cont'd) or approximately two hundred and fifty feet.

Q So it was a little further than two hundred and fifty feet to the driveway then. I would like to show you what has been marked as Defendant's Exhibits Nos. 10, 9, and 11, and ask you if you recognize them?

A Yes.

Q And would you tell us what each of them are?

A The first one is No. 11, is from the Davis Corner Road looking down our driveway, and standing in the road.

THE COURT: When you say looking down, do you mean looking in a northerly direction?

A Yes. A northerly direction to the house. And No. 10, it is a

little farther down the driveway, looking north. And the third one, No. 9, is the house itself.

THE COURT: And that's looking from the driveway in a northerly direction toward the house?

A Yes.

Q How far from your driveway is the No Trespassing sign?

A To the first one? I would say maybe thirty feet or twenty feet, I'm not exactly sure. It is close to the driveway.

Q And you say twenty or thirty feet from the driveway?

A Yes, to the right of the driveway.

Q Mrs. Thornton, what is the approximate total amount of cleared land that you have in the driveway on your

Q (cont'd) property, excluding the buildings and foundation?

A The only other areas are the garden and the two fenced-in areas.

Q And do you know approximately how big that would be?

A The garden is twenty-eight, sixty-two, approximately, and the other small ones are six by six and nineteen by six and a half.

Q Are there any footpaths that go from those two fenced-in areas to your house?

A Well, yes, indirectly.

Q Have you or your husband ever allowed anyone to routinely walk through your property to get to anyone else's property, or to the road?

A No.

Q And you have not allowed hunters on your property?

A No.

Q And you have not allowed other trespassers on your property?

MR. ALSOP: Your Honor, I object.

That is leading.

THE COURT: Sustained.

Q Now these footpaths that you have referred to coming from this area on the north side of your property, from the boundary of your property getting to these two fenced-in areas, would you be able to get through there?

[48]

A No.

Q And how would you described the footpaths to that area?

A Very overgrown, and a lot of them have been washed out.

- Q Now, Mrs. Thornton, I would like to show you what has been marked as Defendant's Exhibit No. 3, and ask you if you are familiar with that area?
- A Yes.
- Q And can you tell me what that area is?
- A That is one of the fenced-in areas in question here.
- Q Can you tell me about how far away the person was that was taking that photograph from the fenced-in area?
- A Right beside it. The fence is right there.
- Q Did you have any occasion to see any police officers on August 3, 1981?
- A Yes.

Q And when did you see them?

A I came home around noontime, and I saw a vehicle in the neighbor's yard, and later that day I saw, well, three of them came to my house.

Q And what time of the day was that?

A Approximately 4:30.

Q And what were you doing at that time?

A I was making supper.

Q And how did the police officers get onto your land?

A They had to have drove a car up the driveway.

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Q And when did you first speak to the police officers?

A When they came to the door.



Q And what did he say when he opened the door?

A Well, they gave me a search warrant, and they told me that they were looking for marijuana, and that they were going to search.

Q And what did you say to them?

A Go ahead.

THE COURT: I'm sorry, what did you say?

A To go ahead.

Q Well, when the officer first gave you the search warrant, did you ask the officer anything?

A I asked him if my husband had to be there in order to have him search.

Q And what did he say?

A No.

Q And then what did you say?

A I don't know. Go ahead. I couldn't say anything else.

Q So by that time the officer had already told you that he was going to search?

A Oh, yes, they told me that they were going to search, and that he did not have to be there in order to do it.

Q And at the time that you were talking to the police officer, what were the other officers doing?

A They were standing around the front of the house,

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A (cont'd) walking around, and waiting, and looking.

Q And where was your husband at the time?

A At work.

Q And when did he return home from work?

A At approximately 5 o'clock.

Q Had the police officers already searched your property by that time?

A Yes, they were gone. I don't know where they had gone.

Q When the officer came to your door, did you consent to the search?

A No, I did not give them permission to search. They told me they were going to.

Q Mrs. Thornton, I would like to show you this document and ask you if you are familiar with it?

A Yes.

Q And what is it?

A This is what Officer Krandall gave to me when he came to the house.

Q And I would like to mark it as  
Defendant's Exhibit No. 14.

THE COURT: What is that the  
warrant?

MS. ZEEGERS: Yes.

Q Did the officer give you anything  
else?

A No, he gave me this piece of  
paper.

Q Nothing was attached to it?

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A No.

THE COURT: Is there any question  
that the affidavit was not attached to  
the warrant, Mr. Alsop?

MR. ALSOP: I don't think it was,  
Your Honor, but I really don't know.

MS. ZEEGERS: I have one further  
question.

Q All of the photographs that I have shown you with the exception for the photographs that came from the Town Office, who took those photographs?

A My husband.

Q But you are familiar with all of that land, and you are familiar with those photographs?

A Yes.

MS. ZEEGERS: I have no further questions.

THE COURT: Those pictures, or the evidence contained in those photographs, Mrs. Thornton, are they a reasonable representation of what existed on the face of the earth at the time they were taken?

A Yes.

THE COURT: And you are offering 2 through 7, is it?

MS. ZEEGERS: Yes. And 14, Your Honor.

THE COURT: Well, 9 through 12 have already been offered and admitted; is that right?

MS. ZEEGERS: Yes.

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THE COURT: And now you're offering, 2, 3, 4, 5, 6, 7, 8, 13 and 14; is that right?

MS. ZEEGERS: Yes.

THE COURT: Mr. Alsop?

MR. ALSOP: Nothing further.

THE COURT: Do you have any objection?

MR. ALSOP: No.

THE COURT: Those exhibits may be admitted without objection. Cross examination, Mr. Alsop?

CROSS EXAMINATION OF MRS. THORNTON

BY MR. ALSOP:

Q Mrs. Thornton, on this south bound of your property here, where you say there is a stone wall; is that correct.

A Yes.

Q Is that an old stone wall?

A Yes.

Q Is it fair to say that it is well broken down and fallen into pieces?

A In parts, or in places, but it is all still there, mostly it's all still there.

Q And far apart?

A In some places.

Q Well, how far apart? A foot?

A In some places, yes. It is an old wall.

Q Heaved up, and spread around in various places?

A In spots, yes.

Q And the signs around your property, would you say it is possible to walk around your property without seeing one?

A Well, I suppose.

Q And particularly if you walk through this area you would be able to walk through and not step over this wall?

THE COURT: Well, when you are referring to this area, for the record, Mr. Alsop, what area are you referring to?

MR. ALSOP: The area of the Leavitt trailer, the trailer on the old diagram which has been marked as -- and I can't remember what - the trailer and the area along the road where Mr. Leavitt lives.



A Yes.

Q It is possible to walk through there and step over that stone wall?

A You would know you were going over the wall, I believe.

Q Is it possible not to see this particular sign?

A Yes.

Q That you say is there. Are these two plots where the marijuana was found growing, surrounded by chicken wire?

MS. ZEEGERS: I object, Your Honor.

[54]

THE COURT: The objection is sustained.

Q Have you been out to these plots?

A Yes, I have.

Q And more than once during the course of the summer of 1981?

A Yes.

Q And were you aware of what was growing out there?

A Yes.

Q Is that in fact why they were growing out in that area?

A Yes.

Q Is it fair to say that you or your husband did not want it to be viewed from the road; is that true?

A True.

Q In fact, they were out in a well-wooded area?

A That's true.

Q And the fence around them was to keep out the animals?

A Anything that would bother it, not necessarily animals.

THE COURT: Police and things like that?

Q Was it possible to see through the fence?

A If you looked through the fence, yes.

Q How do you get inside of those fences?

A Pull the wire down.

Q So there was no gate on it or anything of that sort?

A No. You would have to search to find your way in.

Q This so-called tote road, or foot-path, is quite grown

[55]

Q (cont'd) up, isn't it?

A Yes.

Q And it runs from the house to these?

A No, not directly.

Q Well, in that area?

A Yes.

Q Is it possible from standing at your house to see the marijuana growing?

A No.

Q And standing in the marijuana patch is it possible to see your house?

A No.

Q Or the road?

A No.

Q Did you take any pictures of the wall that surrounds your property?

A No.

MR. ALSOP: I have nothing further.

THE COURT: Do you have anything further, Ms. Zeegers?

MS. ZEEGERS: No, I have no further questions.

THE COURT: You may step down.  
Thank you.

Oh, excuse me, one question. In your house you have a front door, I take it, that faces the driveway?

A Yes.

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THE COURT: Are there any other entrances?

A To our home? No.

THE COURT: So that is the only entrance?

A Right.

THE COURT: So if someone were going to deliver milk there, or any delivery man, they would come to that door?

A Right.

THE COURT: And that's on the east side of the house facing the driveway?

A Yes.

THE COURT: Okay. Thank you.

MS. ZEEGERS: I would like to call Constable Hartford.

THE COURT: For what purpose?

MS. ZEEGERS: Well, Constable Hartford was on the property, searching the property before the search warrant was issued, Your Honor.

THE COURT: Is there any question about that?

MR. ALSOP: No, I believe he was with Trooper Krandall at the time Mr. Krandall went to the scene the first time.

THE COURT: Is that what you want to establish?

MS. ZEEGERS: Yes.

THE COURT: Is there anything else that you want to establish through his testimony?

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MS. ZEEGERS: Your Honor, I had a

conversation with Mr. Hartford, and he told me that he did, with Trooper Krandall, that they went through the property the first time to search through the driveway, or up the driveway, or to the left of the driveway.

THE COURT: You may call him. I take it that you won't stipulate to that?

MR. ALSOP: I don't believe so, Your Honor.

THE COURT: How many more witnesses do you have after that?

MS. ZEEGERS: I'm not sure. I might have one more.

THE COURT: Do you have any witnesses, Mr. Alsop?

MR. ALSOP: No.

HAROLD HARTFORD, called as a witness by the Defendant, having been duly sworn, testified as follows:

CLERK OF COURTS: Do you solemnly

swear that the testimony you shall give in the cause now in hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. HARTFORD: I do.

DIRECT EXAMINATION OF HAROLD HARTFORD

BY MS. ZEEGERS:

Q Constable Hartford, you went up on the property of Mr. Thornton on August 3, 1981, in the morning of that day, did you not?

[58]

A Yes, ma'am.

Q And you went onto the property before you and Officer Krandall obtained a search warrant?

A Yes, ma'am.

Q And do you remember the conversation that you and I had over the telephone approximately a week and a half ago regarding this case?



A I believe so, yes.

Q And do you remember also from that conversation, Officer, don't you, that you told me when you went onto the property that morning to search the property, that you went onto the property right up the driveway, did you not?

A I'm not sure. I do recall the conversation.

Q When you made a search of this property before you obtained a search warrant, you, in fact, got onto the Defendant's property through his driveway, and then you left his driveway and went up onto a small footpath through the wooded area and the fenced-in area?

A No, ma'am.

Q What did you do?

A From his driveway, approximately three or four hundred feet, there is a house trailer, and we went in across on the property where the house trailer was setting through a woods road or path, and turned left on the

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A (cont'd) woods road to north of the area -- We'll say north.

Q Would you say that that woods road basically is a footpath?

A Yes.

Q So then what you are saying is, as you started up the driveway, you then left his driveway --

A No, ma'am. We went up the road, the Davis Corner Road, and parked the cruiser, I believe, just beyond the house trailer, and we

went in across the property, I believe, the Leavitt property. I believe that's the name.

Q And then you went on the property of Mr. Thornton?

A Yes.

Q Are you familiar with the No Trespassing sign on the Davis Corner Road on the Thornton property?

A No, I am not.

MS. ZEEGERS: I have no further questions.

MR. ALSOP: Nothing further, Your Honor.

THE COURT: You may step down.  
Thank you.

Do you rest?

MS. ZEEGERS: Yes, Your Honor.

THE COURT: Does the State rest finally?

MR. ALSOP: Yes.

THE COURT: Mr. Alsop, do you wish to be heard in

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THE COURT (cont'd): argument?

MR. ALSOP: Yes, Your Honor.

CLOSING ARGUMENT by John Alsop, Assistant District Attorney

I think this is a case where actually Officer Krandall got some information from a citizen that marijuana, being out in that wooded area, and he went out there to see for himself to look at it, and if he had actually seized it at that time it would have been a permissible open field type of search, based on the evidence we have heard today. As it was, he went and got a warrant.

THE COURT: How can you say that? How is this an open field situation?

What evidence is there that this is an open field situation?

MR. ALSOP: Well, it is not open field, it is open woods, Your Honor.

THE COURT: Well, is this anything like the Hester open field situation?

MR. ALSOP: Yes, Your Honor. It is not within the curtilage, it is not in the area that is in any way designed to exclude anybody who has a reasonable expectation of privacy.

THE COURT: Well, isn't the test an extension of that case? Isn't that case still good law in Maine?

MR. ALSOP: Yes, Your Honor.

THE COURT: And you don't think there was a reasonable expectation of privacy on the part of the Defendant here?

[61]

MR. ALSOP: No, Your Honor.

THE COURT: I would be more interested in hearing your argument with respect to whether or not the warrant itself was a valid warrant under Aguilar.

MR. ALSOP: Well, the evidence, first of all, the probable cause cited in the warrant, it was fresh, it was based on his own observation, not the observations of the informant, and it is just a way of explaining -- The officer had a right to be there, that is what I would suggest, Your Honor, that is the crux of the case. He went out to check out the information that he had received in a wooded area where there were No Trespassing signs or anything. He had the right to be there. He came back. He wrote up an affidavit saying, "I was just there. This property belongs to Mr. Thornton, and I would like a warrant."

That is really what it boils down to. It is not really an issue as to whether or not the informant was reliable or not. The issue is whether Carroll Krandall was reliable or not, and as stated in the first paragraph of the affidavit, he cites the qualifications of why he is reliable on the identification of this marijuana, and where it is, and who it belongs to, and so I think on that basis that it is a sufficient search warrant.

MS. ZEEGERS: Your Honor, there are, basically, two problems with this case, (1) There was a warrantless

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MS. ZEEGERS (cont'd): search of the property before obtaining a search warrant, and there is also a problem with the validity of it.

THE COURT: Well, was this really a warrantless search?

MS. ZEEGERS: Yes, there was, Your Honor.

THE COURT: Or was it merely a verification of the informant?

MS. ZEEGERS: Your Honor, I believe that a search is defined by an intrusion onto a person's property, and that definition is further defined as to whether there is a reasonable expectation of privacy which was intruded upon by the government, and I believe --

THE COURT: You're saying that for all practical purposes, as far as this motion is concerned, we have no warrant?

MS. ZEEGERS: I am saying that we have a warrant, yes -- or for the first search we had no warrant, but we have a warrant based on an illegal search and seizure, and not based on probable cause,



because there are no underlying facts in the warrant stating that the informant was reliable or credible. So all we have here is a warrantless search, and an attempt to justify that search by obtaining a warrant. It is clear that the burden is on the State to prove for the warrantless search in the first instance that there was

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MS. ZEEGERS (cont'd): probable cause and that there were exigent circumstances to go on the property. Let's look at probable cause. What they got here, they have got a suspicion of an unnamed informant, nothing in the affidavit, or nothing in the evidence, that says that this informant, in fact, is reliable or credible. They have only stated mere conclusions to that effect. The State has not proven that there

were exigent circumstances to go onto the land, they did go onto the land. As a matter of fact, the Officer stated that he waited three days before he even went onto the land. So again, I think in terms of the warrantless search, there is no justification for it.

THE COURT: Are you saying that the words "reliable cooperating citizen" is not enough?

MS. ZEEGERS: Yes, that is what I am saying.

THE COURT: And you are saying that from the Aguilar case?

MS. ZEEGERS: Yes, that's right. And I have said that in my memorandum. Also, there is nothing in this search warrant or in the testimony saying that this informant was any expert in knowing what marijuana was, or what it was not. As a matter of fact, the police officer himself said that he didn't know if he

was on Defendant Thornton's land, and neither did the informant when the informant told him that marijuana was growing back there.

THE COURT: Well, what if he was not on the land?

MS. ZEEGERS: Well, then that would be the issue that we would take up at trial.

THE COURT: Well, let's suppose for a moment that he was on this property where the mobile home was, and the house belonging to someone else, and let's suppose for the moment, that he observed the mesh enclosures from that property.

MS. ZEEGERS: If he had observed those mesh enclosures and saw, in fact, the marijuana growing from the neighbor's land, then according to State v. Peakes, then we could not claim any intrusion, but that is not the case here.

THE COURT: Well, what is the case here? Where did he observe the wire enclosures from? From the Thornton property itself?

MS. ZEEGERS: Yes, Your Honor. He was well onto the Thornton property when he observed it. The Officer has testified, and Mrs. Thornton has testified that these fenced-in areas could not be seen from the neighbor's property. They could not be seen from the road, and they could not be seen from the Defendant's driveway, you know, there may have been a problem with this case if they could see the marijuana growing on the property from the driveway pursuant to U.S. v. Hensel, but that is not the case here. Hensel. So what really happened here is, you know, the police

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MS. ZEEGERS (cont'd): got some

suspicion that there might have been marijuana growing back here, and they weren't sure whether it was Richard Thornton's land or not, but they decided to investigate it, and they investigated it without a warrant, and then they tried to base their warrant on another investigation, and that is something that is protected by the Fourth Amendment.

THE COURT: Assuming that the first visit to the property by the Officer was indeed a search?

MS. ZEEGERS: That's right.

THE COURT: Isn't that really the key issue in this case?

MS. ZEEGERS: Yes, I believe it is. I think I have discussed in my Memorandum of Law sufficiently why it is a search, and I will go over that with you --

THE COURT: No, if it is in your memorandum, it is not necessary.

You also discussed in your memorandum the impact, if any, of Spinelli on this case. Dealing with the informant?

MS. ZEEGERS: Yes, in that case, Your Honor, if it cannot be proved that the informant ~~was~~ reliable by corroborating testimony by the police officer, then the warrant could be valid; however --

THE COURT: And we don't have that kind of a

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THE COURT (cont'd): situation here?

MS. ZEEGERS: No, we don't. There has to be not an intrusion first. If they were going up and down the road and they saw people coming in and out with truckloads of marijuana, then that would be a situation, but the police have to be valid on the property first before Spinelli is taken into

account here, so that you cannot use your legal search to bolster your probable cause. I think that is quite clear.

THE COURT: If there was an illegal search.

MS. ZEEGERS: That's right.

THE COURT: I think I understand your position.

Mr. Alsop, do you have anything further?

MR. ALSOP: Yes, Your Honor. The probable cause, as I said, was based upon what Mr. Krandall saw and not what the informant saw, and we suggest that he did have a right to be there under Hester, and under that, or the Alfalfa Corporation, which was decided recently, that there is still an open field doctrine that is available.

THE COURT: There is no question but what there is an open field doctrine, but the question is, whether or not this case comes under the open field doctrine. This isn't the kind of fact situation that was contemplated by Hester, was it?

MR. ALSOP: That is a government agent going out

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MR. ALSOP (cont'd): into the woods seeing a still, I think, a very similar type situation.

THE COURT: But it was a question whether it was an open field or not, and whether or not it was within the curtilage.

MR. ALSOP: Well, that is the same issue here. We suggest that it is



not a curtilage, this was out in the woods, and for that very reason, it is not within the curtilage. The witness testified that the reason why they put it out in the woods was so that nobody could see it from the house, or from the road, or whatever. It is definitely not within the curtilage.

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